

STATE OF IDAHO



DIVISION OF PURCHASING

VENDOR'S GUIDE

To Doing Business with the
State of Idaho

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NOTE: This Vendor's Guide is for informational purposes only. It is not a legal document and does not take the place of Idaho Code or Division of Purchasing Rules. It is not intended and shall not be construed to create any legal rights or interests of whatever nature in bidders, or to impose legal duties or obligations upon the Division of Purchasing or the State of Idaho. This Vendor's Guide supersedes all previously issued publications.

Cost associated with this publication are available from the Department of Administration, Division of Purchasing in accordance with Section 60-202, Idaho Code.

TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION	
Purpose of This Guide	1
Who Buys for the State?	1
History of State Purchasing	2
Statutes Governing Purchasing Authority	2
Division of Purchasing Mission Statement	2
2. HOW THE STATE OF IDAHO PURCHASES	
Types of Purchases - Purchasing Rules and Procedures	3
Small Purchases of Property or Services	3
Larger Purchases of Property or Services	4
Professional and Consultant Services	4
Information Technology	5
Statewide and Single Agency Contracts	5
Emergency Purchases	5
Exceptions to Bidding	5
3. VENDOR REGISTRATION AND BID NOTIFICATION	
Bid Posting and Notification	6
Vendor Internet Registration	6
No Internet Access	7
More Information	6
Accessing Bidding Opportunities on the Internet	8
Disqualification of Vendors	12
4. BIDDING INFORMATION & GUIDELINES	
Types of Solicitations	12
How to Receive Quote/Bid/Proposal Solicitations	13
Conditions and Instructions to Bidders	13
1. Authority to Purchase	13
2. Purchasing Procedures	14
3. Electronic Signatures	14
4. Definitions	14
5. Award Method	16
6. Determination of Responsibility	16
7. Addenda	16
8. Notice of Contract Effectiveness	16
9. Incurring Costs	16
10. Economy of Preparation	17
11. Specifications	17

	<u>PAGE</u>
12. Conflict of Interest	17
13. Laws	17
14. Preference for Idaho Suppliers for Purchase	17
15. Administrative Appeals	18
16. Submission Forms	19
17. Bid and Request for Proposal Submissions	19
18. Tabulation Information	20
19. Terms and Conditions of Ensuing Contract	20
20. Late Submissions	21
21. Pre-Opening Solicitation Withdrawls or Modification	21
22. Rejection of Bids and Cancellation of Bid Solicitation	22
23. Special Brands	22
24. Burden of Proof – Any Variations	22
25. Discounts	23
26. Unit Prices Govern	23
27. Firm Prices	23
28. Oral Information	23
29. Payment	23
30. Packaging	23
31. Governmental Use Only	23
32. Public Records	23
33. Prior Acceptance of Defective Bids or Proposals	24
34. Length of Contract	24
35. Lease-Purchase Option	24
Standard Contract Terms and Conditions	25
Definitions	25
1. Termination	25
2. Renewal Options	25
3. Prices	25
4. Changes/Modifications	25
5. Conforming Goods or Services	25
6. Official, Agent and Employees if the State Not Personally Liable	26
7. Contract Relationship	26
8. Anti-Discrimination/Equal Employment Opportunity Clause	26
9. Taxes	27
10. Save Harmless	27
11. Order Numbers	27
12. Contractor Responsibility	27

	<u>PAGE</u>
13. Subcontracting	27
14. State of Idaho Minimum Wage Law	28
15. Commodity Status	28
16. Shipping, Delivery, Installation and Acceptance	28
17. Risk of Loss	29
18. Invoicing	29
19. Assignments	29
20. Prohibited Contracts	29
21. Payment Processing	29
22. Government Regulations	29
23. Safety Information	29
24. Hot Goods	30
25. Patents and Copyright Indemnity	30
26. Confidential Information	30
27. Use of the State of Idaho Name	31
28. Appropriation by Legislature Required	31
29. Special Terms Govern	31
30. Force Majeure	31
31. Governing Law and Severability	32
32. Entire Agreement	32
Standard Hardware and Software Terms and Conditions	32
1. Definitions	33
2. Save Harmless	34
3. Software License	34
4. Use of Software and Information	35
5. Warranties	37
6. Warranty Exclusions	38
7. Exclusive Remedies and Limitation of Liability	39
8. Support	40
 5. GENERAL PURCHASING INFORMATION	
Appointments with Buyers and Agency Personnel	41
State Not A Reseller	42
Contracts or Blanket Purchase Orders	42
Gift Policy	42
Definition of An Idaho Vendor	42
Reciprocal Preference Law	43
Printing Preference	43
Public Records Policy	43
Small, Minority, or Disadvantaged Businesses Preferences	44
Tie Bid Preferences	44

	<u>PAGE</u>
Public Records Policy	44
Open Records	44
Public Records Photocopy Request Policy	44
Purchases for Private Use	45
Substitutions After Contract Award	45
Listing of Job Openings	45
Anti-Discrimination/Equal Employment Opportunity	45
6. ZONE/AREA MAPS	46

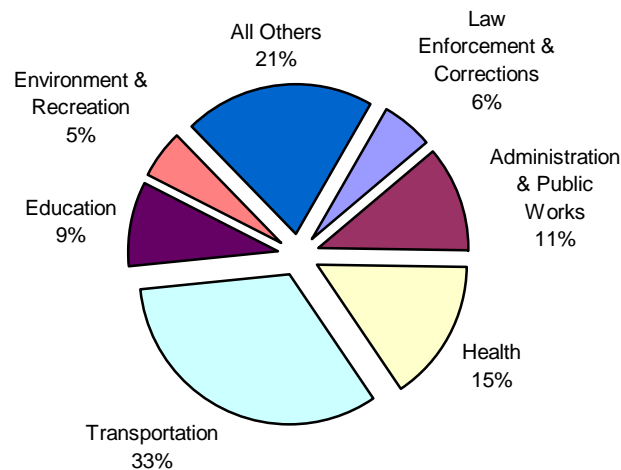
1. INTRODUCTION

Purpose of This Guide

The Department of Administration, Division of Purchasing, has prepared this publication to: (1) acquaint potential suppliers with our purchasing process; (2) serve as a guide for doing business with the State of Idaho; and (3) to promote good relationships between vendors and the State. The State of Idaho is constantly looking for innovative, reliable, and competitive vendors who can demonstrate more efficient and cost effective ways of satisfying the state's requirements.

Who Buys for the State?

State government is one of the largest consumers of goods and services in the State of Idaho. Every year the State purchases over \$700 million worth of goods, services, and capital equipment. The State is not a single entity. It is made up of many departments, divisions, bureaus, boards, commissions, districts, regional offices, and other authorities. Small purchases are made by these various groups located throughout Idaho. Larger purchases are made by the Department of Administration, Division of Purchasing on behalf of the various agencies. The Division of Purchasing is responsible for the oversight of all state purchasing activities. The following chart shows the categories that make up the largest percentages of the State's total purchases: (All percentages are approximate)



Environment and Recreation includes Fish and Game, Parks and Recreation, Lands, and Water Resources.
Education includes Universities and Colleges, Vocational Ed., State Library, Historical Society, and Public Television.

Transportation includes Highways, Aeronautics, and Public Transportation.

Health includes Health and Welfare, State Hospitals, Veterans Homes, Environmental Quality, and Public Health Districts.

Administration includes Public Works, Information Technology, and Purchasing.

Vendors are encouraged to access the Idaho Purchasing Homepage web site (www2.state.id.us/adm/purchasing) where up-to-date information about bidding opportunities, state purchasing personnel, purchasing rules and other purchasing related information is displayed.

History of State Purchasing

Idaho was one of the first states in the west to establish a centralized purchasing program. It began in 1919 as the Bureau of Supplies, under the Department of Public Works, and later became a separate entity under the direction of the Governor's Office. In 1974 the Division of Purchasing, under the Department of Administration, was established. Today, the Division of Purchasing uses an automated purchasing system, utilizes the Internet to distribute purchasing information, and conducts regular training sessions for state purchasing personnel and the vendor community.

State Statutes & Purchasing Authority

State purchasing activity is governed by state statute (Idaho Code Title 67, Chapter 57). The statutes may be viewed and printed through the Internet via the Idaho Purchasing Homepage (www2.state.id.us/adm/purchasing). These laws:

- Place authority and responsibility for state purchases in the Department of Administration, Division of Purchasing.
- Permit the Division to delegate authority for some purchases to other state agencies.
- Establish competitive bidding as the preferred method for obtaining goods and services.

This guide addresses only the purchase of products and services relating to the Division of Purchasing activities and does not address building or construction projects under the jurisdiction of the Department of Administration, Division of Public Works or highway construction and maintenance under the jurisdiction of the Idaho Transportation Department. Construction projects are subject to the Idaho Public Works Contractor's Licensing Act (*I.C. 54-1901 through 54-1930*). Information about public works type projects may be obtained by calling the Division of Public Works at (208) 332-1900 or at their web site: <http://www2.state.id.us/adm/pubworks/>. Information about transportation projects may be obtained by calling (208) 334-8429 or on their web site at: <http://www2.state.id.us/itd/index.htm>.

Division of Purchasing Mission Statement

The mission of the Division of Purchasing is to purchase goods and services by securing maximum value for the tax dollar and to provide service to state agencies and the public in a timely and courteous manner through ethical and impartial relations with vendors and state personnel.

2. HOW THE STATE OF IDAHO PURCHASES

Types of Purchases - Purchasing Rules and Procedures

The Division of Purchasing has created rules (IDAPA 38.05.01) to supplement purchasing statutes and has outlined procedures to govern the purchase of property and services. These rules have been reviewed and approved by the State Legislature. The following is a summary of the types of purchases and the rules and procedures used by the state.

Small Purchases of Property or Services

Less Than \$5,000.00 For purchases expected to cost less than \$5,000 no competitive bidding is required. However, the purchase is to be in accordance with good business practice and in the best interests of the state.

All agencies have authority to make purchases under \$5,000. Purchases are made with an agency purchase order or by use of a State of Idaho Purchasing Card.

More Than \$5,000

Less Than \$50,000

Purchases over \$5,000 and under \$50,000 require a minimum of three (3) competitive solicitations from vendors with a significant Idaho economic presence as defined by Idaho Code. Larger agencies may have delegated authority to make purchases, up to a maximum of \$50,000, depending upon their need.

Idaho Code 67-2349 defines significant Idaho economic presence as: the bidder must have, for a minimum of one year prior to the bid, maintained in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property. Further, if the bidder is a corporation, it must be registered with the office of the Secretary of State and licensed to do business in the State of Idaho.

See Page 6, Bid Posting and Notifications and Page 8, Accessing Bidding Opportunities on the Internet.

Larger Purchases of Property or Services (Formal Sealed Bidding)

More Than \$50,000 Purchases over \$50,000 require public notification of the solicitation. Solicitations may be in the form of an Internet posting, e-mail notification, or direct mailing to vendors. Hard copies are also posted at the Division of Purchasing office. These are formal, sealed bids and are conducted by the Division of Purchasing.

See Page 6, Accessing Bid Posting and Notifications and Page 8, Accessing Bidding Opportunities on the Internet.

Professional and Consultant Services

Less Than \$50,000 Services of professionals or consultants costing less than \$50,000 and less than one (1) year in duration may be acquired by agencies without competitive bidding in accordance with good business practice and in the best interests of the state. Requirements for professional or consultant services exceeding \$50,000 or one (1) year require that formal, sealed bids be conducted by the Division of Purchasing.

Professional Services are defined as work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

Consultant Services are defined as work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions, or recommendations will be performed according to the consultant's

methods without being subject to the control of the agency except as to the result of the work.

Information Technology

The Information Technology Resource Management Council (ITRMC) and its associated Project Team coordinates, manages, and facilitates implementation of the state's long range technology plan. All information technology purchases are made in accordance with ITRMC recommendations, state statutes, and Division of Purchasing Rules.

Less Than \$5,000

Property

Information Technology (IT) property (defined as computer hardware, software, computer related office automation, automated data processing and telecommunications), not available on statewide contracts, costing less than \$5,000 may be acquired as each agency sees fit. IT property exceeding \$5,000 is subject to the competitive bidding process. The State has microcomputer contracts in place to fulfill most needs.

Less Than \$50,000

Services

Information Technology services less than \$50,000 acquired through a service contract not to exceed one (1) year may be acquired as each agency sees fit. Service contracts in excess of \$50,000 or more than one (1) year are subject to competitive bidding.

Statewide and Single Agency Contracts

The Division of Purchasing develops statewide contracts (Blanket Purchase Orders) for commonly used items and services used by multiple agencies and specific item or service contracts for single agency use. Statewide contracts are generally bid and awarded by zones or areas (see maps, page 40). Purchases from contracts by agencies do not require any further bidding and do not have a dollar limitation unless specially mentioned in the contract. Agencies simply issue release orders against statewide contracts.

Emergency Purchases

The Division of Purchasing, after determining that an emergency exists, may authorize the purchase of property or services by any reasonable means, with any available specification, without regard to the competitive bid provisions of purchasing rules.

Exceptions to Bidding

Purchases from sole sources, the federal government, rehabilitation agencies, Correctional Industries, and purchases less than the bid limits described above are exempt

from informal or formal bidding procedures. The Division of Purchasing reserves the authority to determine if an item or service meets the qualifications to be exempt from bidding.

The complete *Division of Purchasing Rules* may be viewed or printed from the Idaho Purchasing Homepage web site (www2.state.id.us/adm/purchasing).

3. THE VENDOR REGISTRATION AND BID NOTIFICATION SYSTEM

Bid Posting and Notification

The Idaho Division of Purchasing posts business opportunities on the Sicommnet BASEC™ system. A few state agencies are also using this system. Use of this Internet-based system allows vendors to respond to solicitations on-line or download non-interactive bids or proposals. Vendors may search for business opportunities at no cost or, for a small subscription fee, receive e-mail notifications of opportunities in selected commodity classifications.

Vendor Internet Registration

The State of Idaho does not require that a vendor be registered with the State in order to do business. However, since solicitations are posted on the Internet in the Sicommnet BASEC™ system, you will need to register and profile your company in BASEC™ to search, view, respond on-line or download solicitations.

There is **no charge** to register, profile your company, and search and view Idaho solicitations. However, other states, cities, and counties are also using this system across the nation and some transaction or registration fees may apply to them. Sicommnet also offers optional value-added services for a yearly subscription fee explained in detail during the registration process. To register go to:

<http://www.sicomm.net>
Click on **Signup**
Follow on-line Instructions
For Help call **800-575-9955**

No Internet Access

For those vendors without Internet access, paper copies of all formal, sealed Invitations to Bid and Requests for Proposal are still available and may be viewed at the Idaho Division

of Purchasing office, 5569 Kendall, Boise, ID 83706 during normal business hours (8-5, M-F). Smaller purchases (Request for Quotations) are generally processed by individual state agencies and copies are not available through the Division of Purchasing office.

The Idaho Dept. of Commerce's Idaho Business Network (IBN) offers a bid-matching service for Idaho businesses. IBN will search bidding opportunities on the Internet from federal, state, and local agencies as well as from local large corporations and notify their members by e-mail or fax of the bid. All states have similar programs. For more information contact the Idaho Business Network at 208-334-2470 or 1-800-842-5858 or see their web site at: <http://www.idahoworks.com>

More Information

Additional information about Idaho's use of the BASEC™ system is available on the purchasing web site.

<http://www2.state.id.us/adm/purchasing>

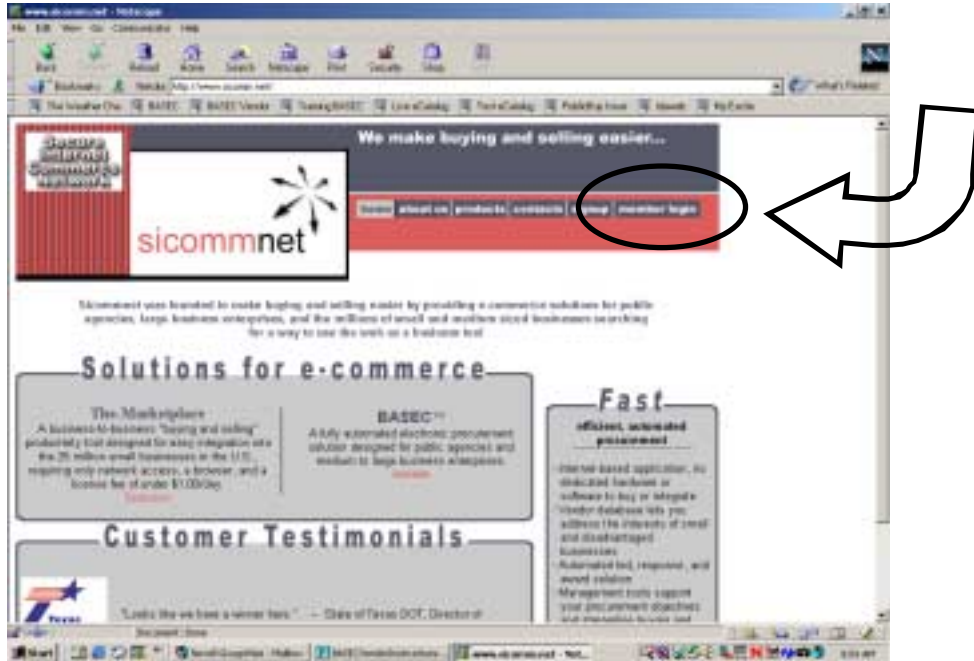
Click on **Vendor Information** link or the **e-purchasing system** link



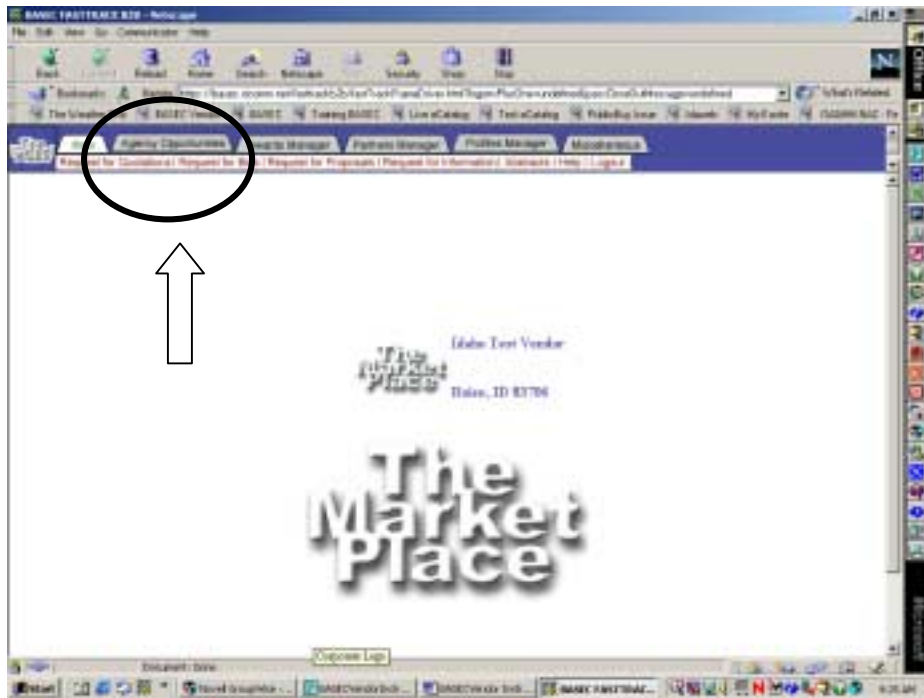
Accessing Bidding Opportunities on the Internet

After your registration is complete you are ready to access bidding opportunities. Follow these steps to view, respond to or download bids, quotes, or proposals:

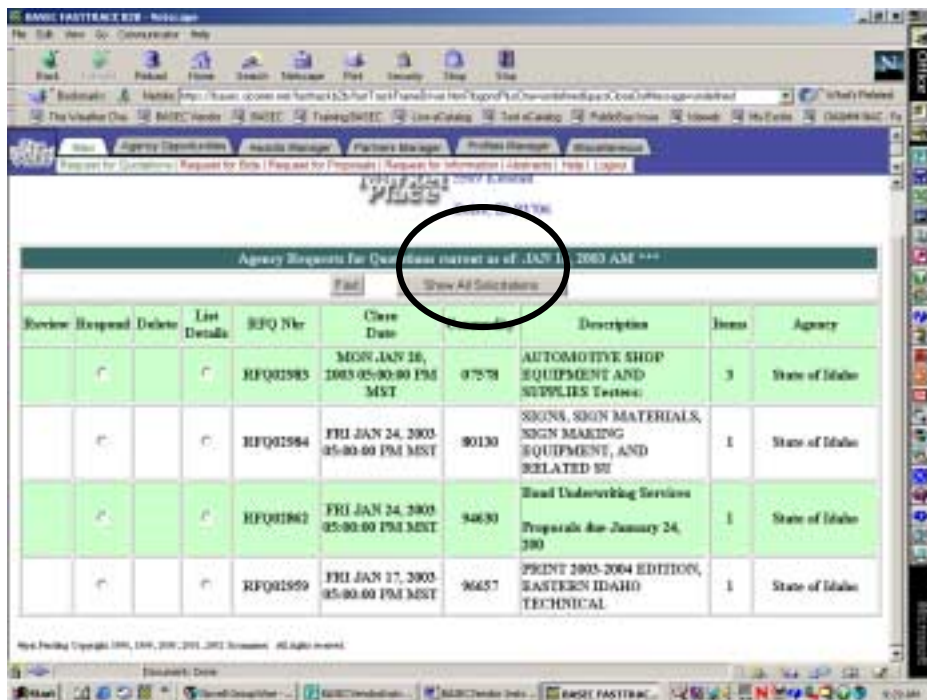
- Go to: <http://www.sicomm.net>
- Click on “Member Login”
- Enter your User ID and password, then select Agency Opportunities from the Folder Tab Menu.



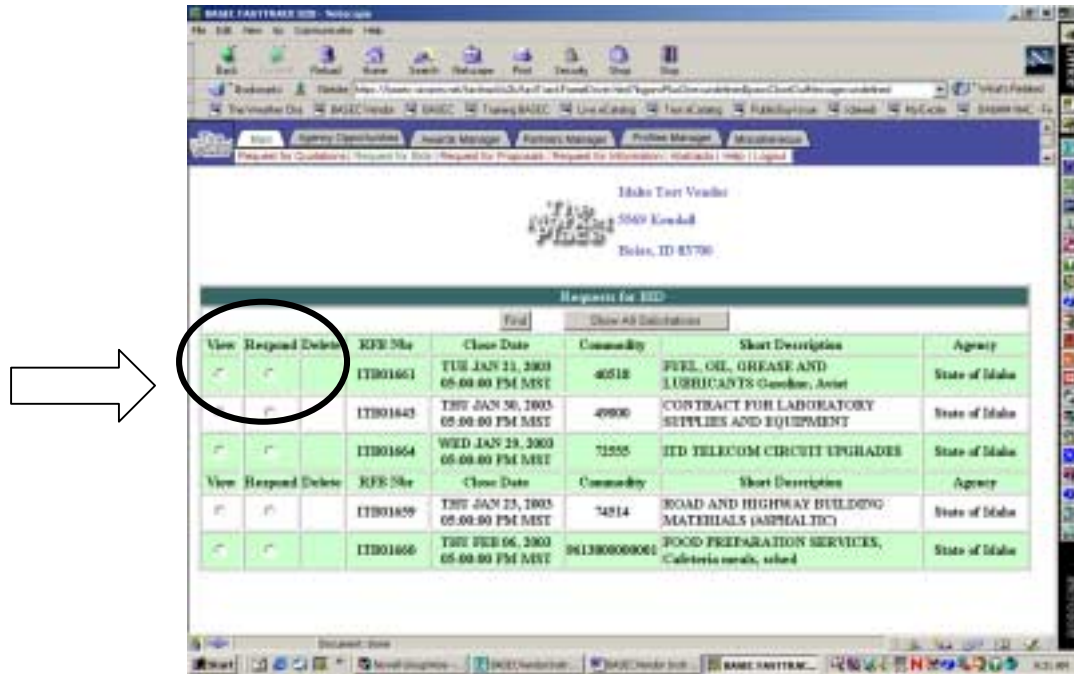
- d. A sub-menu will appear with the options; Request for Quotation, Request for Bid, Request for Proposal, or Request for Information. Click on one of these option.



- e. Solicitations are filtered according to your selected commodity codes and displayed. To see all solicitations available, (those that are not in your commodity code) click on the Show All Solicitations button.

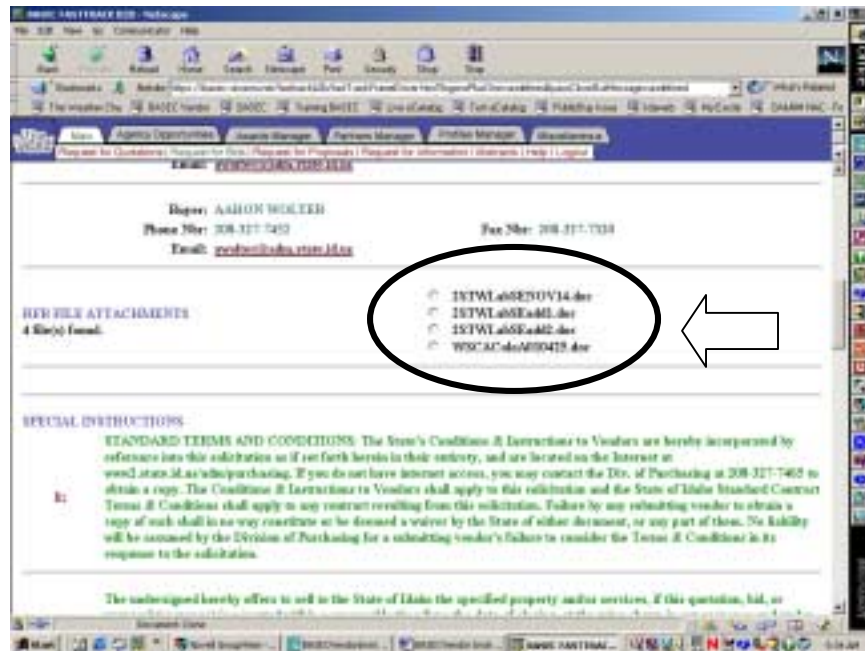


- f. Solicitations can either be just viewed or viewed and responded to. To see all the information available, click on Respond radial button. NOTE: Some Request for Proposals cannot be responded to on-line. Click on the View button to access these.



- g. Scroll down to see information about terms and conditions, special instructions, etc. Look for any attachments that need to be opened and viewed or downloaded. Attachments can be found as linked files in the header area or near the item description. Click on the radial button or underlined file name to open the attachment.





- h. To respond on-line, scroll down to the bottom where a price can be entered. There is also a comment field for you to add additional information about your response.
- i. Click on the Submit Response button. You will receive an on-line confirmation that your response has been received and a summary of your response. You will also get an e-mail confirmation the next day.
- j. You may change your response by simply entering a new one. The system will override the first response and only save the second one.

Disqualification of Vendors

Idaho Code 67-5730 states that vendors may be disqualified from submitting bids for periods of six (6) months to five (5) years for any of the following reasons:

- Failure to perform according to the terms of any agreement;
- Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor;
- Use of the provisions of the purchasing statutes to obstruct or unreasonably delay acquisitions by the State (obstruction is defined as a lack of success in more than fifty percent (50%) of the specification challenges made in each of three (3) different acquisitions during any twenty-four (24) month period);
- Perjury in a vendor disqualification hearing;
- To knowingly violate the provisions of the purchasing statutes; or
- Debarment, suspension or ineligibility from federal contracting of the vendor, its principals or affiliates.

Vendors who are disqualified may request of the Director of the Department of Administration a hearing before a determinations officer. In lieu of disqualification, the determinations officer may recommend specific conditions to the vendor's continued participation in acquisitions by the State.

4. BIDDING INFORMATION & GUIDELINES

Types of Solicitations

The State uses three (3) different types of bid solicitations:

- Request for Quotation (RFQ) - The document form, and/or other method used when purchases are solicited in accordance with small purchase procedures, or emergency purchase procedures as authorized by the Administrator of the Division of Purchasing. The request and the quotation in response may either be electronic, written, facsimile, or oral as specified by the buyer.
- Invitation to Bid (ITB) - All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. Invitations to Bid are publicly opened at a specified date and time.
- Request for Proposal (RFP) - All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals and is generally utilized in the

acquisition of services or complex purchases. Request for Proposals are publicly opened at a specified date and time.

How To Receive Quote/Bid/Proposal Solicitations

Informal Requests for Quotations (RFQ) are issued by the Division of Purchasing or by state agencies with delegated authority. RFQs are sent directly to vendors supplying the commodity required either by fax, mail, personal visit, telephone call, or posted on the Internet. Vendors should contact the purchasing personnel at state agencies with delegated authority directly. The Division of Purchasing is not notified of RFQs issued by agencies within their delegated authority. A list of agency purchasing personnel is available on the Internet at the Idaho Purchasing Homepage.

Formal Invitations to Bid (ITB) and Requests for Proposals (RFP) are issued by the Division of Purchasing and a few selected state agencies. They are posted on the Internet and/or distributed to vendors who have indicated that they can provide the commodity being requested. Hard copies of formal solicitations issued by the Division of Purchasing are also posted at the Division of Purchasing office.

State of Idaho Conditions And Instructions To Bidders, Standard Contract Terms and Conditions

The following State of Idaho's Conditions and Instructions to Vendors and Standard Contract Terms and Conditions are incorporated by reference into every solicitation.

The most current version is always posted on the Division of Purchasing web site and supercedes this printed copy. Check the web site for revisions at:

<http://www2.state.id.us/adm/purchasing>

Failure by any submitting vendor to obtain a copy of such from the Internet or from the Division of Purchasing shall in no way constitute or be deemed a waiver by the State of either the Instructions and Conditions to Vendors or the State of Idaho Standard Contract Terms and Conditions, or any part of them.

No liability will be assumed by the Division of Purchasing for a submitting vendor's failure to obtain the Terms and Conditions in a timely manner for use in the submitting vendor's response to a solicitation or any other failure by the submitting vendor to consider the Terms and Conditions in its response to the solicitation.

Conditions and Instructions to Vendors

1. **AUTHORITY TO PURCHASE:** The Administrator of the Division of Purchasing, Department of Administration or the Administrator's delegates are the only statutory agents authorized to execute contracts, purchase orders or leases for the procurement

of goods and services, except for those agencies, amounts, or commodities specifically exempt by statute.

2. **PURCHASING PROCEDURES:** Beginning July 1, 2001 the state of Idaho, Division of Purchasing and its individual departments and agencies (State) began the transition to an electronic purchasing system. Vendors may either search the web site for bidding opportunities or receive electronic e-mail notifications of opportunities. There is a small fee for e-mail notification from the State's contracted service provider, SiCommNet. Vendors access the web site using a standard Internet Browser (Netscape version 4.5 or later or Microsoft Internet Explorer version 5.5 or later). Invitations to Bid (ITB), Request for Proposals (RFP), and Request for Quotations (RFQ) may be previewed on-line or downloaded and printed. Responses to ITB's or RFQ's may also be made electronically on-line. A preliminary summary (abstract) of all priced responses from bidders to ITB's or RFQ's will be available for on-line viewing the day following the opening. Awards (purchase orders or contracts) and release or delivery orders against term contracts will be made and sent by e-mail notification to the lowest responsible bidder (contractor). Provisions may also be in place for the contractor to invoice the state agency electronically and for the contractor to be paid electronically by the State.
3. **ELECTRONIC SIGNATURES:** The SiCommNet BASEC Electronic Purchasing System processes all information electronically on the SiCommNet web site. Signatures by both the submitting vendor and the State when using the SiCommNet BASEC Electronic Purchasing System will be electronic and any requirements for manual signatures on bidding and purchasing documents are not necessary. Electronic signatures used with the SiCommNet BASEC Electronic Purchasing System are as fully binding and legal for the State's purchasing process as a manually affixed signature. Any reference in these **CONDITIONS AND INSTRUCTIONS TO VENDORS** to "signed," "signature," "manually signed in ink," or equivalents will include electronic signature, if the bidder is using the SiCommNet BASEC electronic purchasing system.
4. **DEFINITIONS:** For purposes of these **CONDITIONS AND INSTRUCTIONS TO VENDORS**, the following terms have the specific meanings associated with them:
 - A. Bid - A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an Invitation to Bid (ITB).
 - B. Bidder- A vendor who has submitted a bid or quotation on specific property
 - C. Contract - Contract means any state written agreement, including solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments mutually agreed upon by both parties.

- D. Invitation To Bid - Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids.
- E. Offeror - A vendor who has submitted a proposal in response to a request for proposals for property to be acquired by the state.
- F. Proposal - A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.
- G. Purchase Order - See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of a bidder's proposal or bid.
- H. Quotation. An offer to supply property in response to a request for quotation and generally used for small or emergency purchases
- I. Request For Proposals - Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals and is generally utilized in the acquisition of services or complex purchases.
- J. Request for Quotation: - The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures.
- K. Sealed - Includes bids electronically sealed and submitted in accordance with requirements or standards set by the Division and bids manually sealed and submitted.
- L. SiCommNet BASEC Electronic Purchasing System - The electronic purchasing system called BASEC (Buying And Selling by Electronic Commerce) as hosted by Secure Internet Commerce Network, Inc. (SiCommNet) and used as the State's Internet Web based purchasing system.
- M. Solicitation - Means an invitation to bid, a request for proposals or other document issued by the purchasing activity for the purpose of soliciting bids, proposals or offers to perform a contract.
- N. State - This means the state of Idaho including each agency unless the context implies other states of the United States.
- O. Vendor - A person or entity capable of supplying property to the state.

5. **AWARD METHOD:** Contracts may only be awarded to the "Lowest Responsible Bidder." The Lowest Responsible Bidder is defined by Idaho Code Section 67-5716(12) as "The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price." When deemed to be in the best interest of the State, and set forth in the bid documents, additional consideration may be given to the elements of discounts, supply location, quality of products or previous service, delivery time, or other elements.
6. **DETERMINATION OF RESPONSIBILITY:** The State reserves the right to make reasonable inquiry from the submitting vendor or third parties to determine the responsibility of a submitting vendor. Such inquiry may include but not be limited to inquiry regarding financial statements, credit ratings, references, and past performance. The unreasonable failure of a submitting vendor to promptly supply any requested information with respect to such submitting vendor may result in disqualification. Except as otherwise provided by law, information furnished by the submitting vendor pursuant to this provision may not be disclosed outside the Division of Purchasing or using agency without prior written consent of the submitting vendor.
7. **ADDENDA:** It will be the vendor's responsibility to check for any addenda prior to submitting a bid, proposal, or quotation. In the event it becomes necessary to revise any part of the solicitation documents, addenda will be made available. Information given to a vendor will be available to all other vendors if such information is necessary for purposes of submitting a bid or proposal or if failure to give such information would be prejudicial to uninformed vendors.
8. **NOTICE OF CONTRACT EFFECTIVENESS:** It is understood that this document or any resulting contract or amendment is not effective until the appropriate State purchasing official has signed (which signature may be electronic) the document, contract, or amendment, the effective or award date has been completed on the document by the State purchasing official, and that date has arrived or passed. Neither the vendor nor his organization will provide goods or render services to the State under the terms of this document, contract, or amendment until such document, contract, or amendment has been fully signed by the State purchasing official and the contract has become effective. Furthermore, the State is in no way responsible for reimbursing the vendor for goods provided or services rendered prior to the appropriate signature by the State purchasing official and the arrival of the effective date of the contract.
9. **INCURRING COSTS:** The state of Idaho is not liable for any cost incurred by vendors prior to the issuance of an agreement, contract or purchase order.

10. **ECONOMY OF PREPARATION:** If submitting a proposal, please note that proposals should be prepared simply and economically, providing a clear, complete and concise description of the offerors' capabilities to satisfy the State's requirements.
11. **SPECIFICATIONS:** Specifications describe the property the State wants to acquire. If you are unsure of what the State wants, please present written questions within prescribed time periods to the appropriate purchasing official. Any variance from the specifications must be clearly pointed out in writing by the vendor, including information for comparison purposes; otherwise it will be considered that those items are in strict compliance with the specifications. To be valid, all such exceptions or variances taken must be submitted with or on the original quotation, bid, or proposal document. Also, see the description of Specification Appeals below. Idaho Code Section 67-5726 (3) reads: "No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of an acquisition award." Idaho Code Section 67-5730 (2) reads: "Vendors may be disqualified for any of the following reasons: (b) Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor." The State is prohibited from accepting property that does not meet the minimum bid specifications pursuant to Idaho Code Section 67-5726(4) and Section 67-5736.
12. **CONFLICT OF INTEREST:** Idaho Code Section 67-5726(6) reads: "No vendor or related party, or subsidiary, or affiliate of a vendor may submit a bid to obtain a contract to provide property to the state, if the vendor or related party, or affiliate or subsidiary was paid for services utilized in preparing the bid specifications or if the services influenced the procurement process." To prevent the perception of a conflict of interest, the successful vendor will be prohibited from competing as a contractor or subcontractor for any project(s) that may result, directly or indirectly, from the implementation of recommendations made during a project.
13. **LAWS:** The laws governing the State's purchases of goods and services are found in the Idaho Code Section 67-5714 through Section 67-5744 and IDAPA 38.05.01, both available on the Internet at <http://www2.state.id.us/adm/purchasing>. Attention is directed to the fact that it is the vendor's responsibility to conform to ALL applicable federal, state and local statutes or other applicable legal requirements. The information provided herein is intended to assist vendors in meeting applicable requirements but is not exhaustive and the state of Idaho will not be responsible for any failure by vendor to meet applicable requirements.
14. **PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES** (Idaho Code Section 67-2349): The law requires providing a reciprocal preference for Idaho domiciled vendors on purchases of materials, supplies, equipment, or services. The law and any applicable percentage preference are ONLY applicable to vendors domiciled outside Idaho in locations granting THEIR domiciled vendors a preference. It is not applicable to domiciled vendors in locations without a preference law or a reciprocal

preference law. The vendor may be asked at anytime to provide information on domicile. If the vendor is unsure of where the business is domiciled, the following "rules of thumb" may help:

Corporation: Domiciled where chartered (state of incorporation).

Partnership: Domiciled where permanent headquarters of business is located.

Sole Proprietor: Domiciled where permanent headquarters of business is located.

15. ADMINISTRATIVE APPEALS: The laws applicable to administrative appeals are set forth at Section 67-5733, Idaho Code. In summary, they are:

- A. Specification Appeal: Beginning with the day a vendor receives the solicitation document and ending ten (10) working days later, the vendor may challenge the specifications. The vendor must notify, in writing, the Administrator of the Division of Purchasing of his intention to challenge the specification and specifically state the exact nature of the challenge. The challenge shall describe the location of the challenged portion or clause in the specification document and explain why the provision should be struck, added or altered, and shall contain suggested corrections. Upon receipt of the challenge, the Administrator for the Division of Purchasing may either deny the challenge or request the Director of the Department of Administration to appoint a determinations officer. If a determinations officer is appointed, all vendors invited to bid shall be notified of the appeal and the appointment of a determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days. The determinations officer may require that the specifications be rewritten, rewrite the specifications himself and/or reject all or any part of the challenge.
- B. Bid Rejection Appeal: Within five (5) working days following receipt of notice of rejection, a bidder may appeal the decision to the Director of the Department of Administration. This appeal is only available to a vendor whose bid is found non-responsive (i.e., a bid that does not comply with the bid solicitation and specifications). It does not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder. The Director may either deny the appeal or appoint a determinations officer to review the record and submit a recommended order to the Director. Upon receipt of the determination officer's written recommendation, the Director may sustain, modify or reverse the non-responsive bid decision.
- C. Bid Award Appeal: A vendor whose bid is considered may, within five (5) working days following receipt of notice that it is not the lowest responsible bidder, apply to the Director of the Department of Administration for appointment of a determinations officer. The appeal must set forth in specific terms the reason why the Administrator's lowest responsible bidder decision is erroneous. Upon receipt of the appeal, the Director shall, within three (3) working days, either (i) deny the appeal; (ii) appoint a determinations officer to review the record and

provide written recommendations; or (iii) appoint a determinations officer with authority to conduct a contested case hearing within the context of the Idaho Administrative Procedures Act. Upon receipt of the determinations officer's written recommended order, the Director shall either sustain, modify or reverse the Division of Purchasing's decision.

16. **SUBMISSION FORMS - MANUAL SUBMISSIONS:** For manually sealed and submitted bids or proposals, submitting vendors must use the State's supplied bid or proposal form when submitting their bid or proposal. The solicitation signature page form **MUST** be manually signed in ink by an authorized agent of the submitting vendor and returned with the submission package. Bids or proposals not submitted with the signature page form shall be found non-responsive and will not be considered. Incomplete and/or unsigned documents will be cause for non-acceptance and a finding of non-responsiveness. The signature page must contain an **ORIGINAL HANDWRITTEN** signature executed in **INK** and be returned with the relevant bid solicitation documents. **PHOTOCOPIED SIGNATURES** or **FACSIMILE SIGNATURES** are **NOT ACCEPTABLE**. Submissions must be completed either in ink or typewritten. Forms or figures written in pencil are not acceptable. Mistakes should not be erased but may be crossed out and corrections inserted next to the errors and initialed **IN INK** by the person signing. **THIS INCLUDES BUT IS NOT LIMITED TO CORRECTIONS MADE USING WHITEOUT CORRECTION FLUID AND TYPEWRITER CORRECTION TAPE.**

SUBMISSION FORMS – MANUAL QUOTATIONS: For manually submitted quotations, the bidder may use any response and submission form authorized by the Request for Quotation, including oral, telephonic, facsimile, e-mail, or regular mail.

SUBMISSION FORMS – ELECTRONIC: For vendors using the Sicomnet BASEC electronic purchasing system, proper completion of the electronic forms is required.

17. **BID AND REQUEST FOR PROPOSAL SUBMISSIONS - MANUAL SUBMISSIONS:** The bid package or envelope must be **SEALED** and plainly marked in the **LOWER** left corner with the following: (i) the name of the item or service being sought; (ii) opening date and time; and (iii) the solicitation number. This information is found in the bid solicitation information. The submitting vendor's return address must appear on the envelope or package. All bid sheets and the bid solicitation signature form containing an original authorized signature executing the bid must be submitted in a sealed envelope or package. (Do not respond to more than one bid number in the same envelope!) A bid submitted using "Express/Overnight" services must be shipped in a separate sealed inner envelope/package identified as stated above, and enclosed inside the "Express/Overnight" shipping container or package. No responsibility will attach to the State, or to any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a bid not properly addressed and identified. **DO NOT FAX YOUR BID.** Bids must be submitted in writing. No oral, telephone, facsimile, telegraphic, or late bids will be considered. Hand-delivered bids must be received at the State's reception desk (or

other designated bid depository) and time and date stamped prior to the bid opening date and time. IT IS THE BIDDER'S RESPONSIBILITY TO TIMELY SUBMIT THE BID IN A PROPERLY MARKED ENVELOPE, PRIOR TO THE SCHEDULED BID OPENING, FOR RECEIPT IN SUFFICIENT TIME TO ALLOW THE BID TO BE TIME AND DATE STAMPED.

BID SUBMISSIONS - ELECTRONIC: For bids submitted by means other than manual methods, bidders using the SiCommNet BASEC Electronic Purchasing System must complete all steps in the bid submission process prior to the scheduled bid opening date and time.

18. TABULATION INFORMATION – MANUAL/ELECTRONIC OPENING:

Electronic and manually distributed solicitations will contain detailed information regarding closing/opening dates and times. Vendors may attend openings of manually submitted solicitations at the place, date, and time specified on the solicitation. At that time, only the names of bidders will be announced and no other information will be available until the award of the solicitation. Persons may request tabulation information when it becomes available. Depending upon the complexity of the solicitation, tabulations may take as long as thirty (30) days. No tabulation information will be given over the phone.

TABULATION INFORMATION – ELECTRONIC OPENINGS:

Unless otherwise noted in the solicitation documents, electronic solicitations will close at 5:00 p.m. By 8:00 a.m. the following business day, vendors may, except for RFP's, view a preliminary price tabulation on the Internet.

- 19. TERMS AND CONDITIONS OF ENSUING CONTRACT:** Any ensuing contract will be governed by the State's Standard Contract Terms and Conditions, any applicable Special Terms and Conditions of the State that are included in the bid solicitation and, if applicable, any negotiated provisions. NO ADDITIONAL OR SUPPLEMENTAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDER AS PART OF THE BID RESPONSE SHALL BE EVALUATED OR CONSIDERED. ANY AND ALL SUCH ADDITIONAL TERMS AND CONDITIONS SHALL HAVE NO FORCE AND EFFECT AND SHALL BE INAPPLICABLE TO THIS BID AND ENSUING CONTRACT. IF ADDITIONAL OR SUPPLEMENTAL TERMS AND CONDITIONS EITHER INTENTIONALLY OR INADVERTENTLY APPEAR SEPARATELY IN TRANSMITTAL LETTERS, SPECIFICATIONS, LITERATURE, PRICE LISTS OR WARRANTIES, IT IS UNDERSTOOD AND AGREED THAT THE GENERAL AND ANY SPECIAL CONDITIONS IN THIS BID SOLICITATION ARE THE ONLY CONDITIONS APPLICABLE TO THE BID AND ANY ENSUING CONTRACT AND THE BIDDER'S AUTHORIZED SIGNATURE AFFIXED TO THE BID SOLICITATION FORM ATTESTS TO THIS. IF YOU CONDITION YOUR BID ON SUCH ADDITIONAL TERMS AND CONDITIONS, YOUR BID WILL BE DEEMED NONRESPONSIVE. IF YOU HAVE QUESTIONS CONCERNS REGARDING

THE STATE'S TERMS AND CONDITIONS, ADDRESS THEM IN WRITING TO THE APPROPRIATE PURCHASING OFFICIAL WITHIN THE TIME PERIOD PRIOR TO THE SOLICITATION CLOSING DATE.

20. **LATE SUBMISSIONS:** It is the vendor's responsibility to ensure that its bid, quotation, or proposal is delivered or electronically submitted to the place designated for receipt on or before the date and time specified for opening. Late submissions will not be considered under any circumstances. Submissions may not be completed, amended or clarified on the face of the submission after the official opening time. The official time used in the receipt of manual submissions is the prevailing local time as evidenced by the automatic time/date stamp located in the State's purchasing office or other designated bid depository location. Electronic submissions will use Sicommnet's BASEC electronic purchasing system's time to determine receipt time.. No responsibility will be assumed for delays in the delivery of mail by the U.S. Post Office, private couriers, the intra-state mail system, or for the failure of any computer or electronic equipment. **LATE SUBMISSIONS WILL BE DECLARED REJECTED AND RETURNED TO THE SUBMITTING VENDOR. NO DEVIATIONS WILL BE ALLOWED.**

21. **PRE-OPENING SOLICITATION WITHDRAWALS OR MODIFICATION -**
MANUAL:. Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by telegraphic communication provided the telegraph is received prior to the closing. The withdrawal or modification, if done via telegraph, must be confirmed in writing, signed in ink. The written confirmation must be mailed and postmarked no later than the closing date. If the written confirmation of the withdrawal or modification is not received within two (2) working days from the closing date, no consideration will be given to the telegraphic modification. Any withdrawing or modifying communication, including a telegram, must clearly identify the solicitation. A modifying letter or telegram should be worded so as not to reveal the amount of the original bid or proposal. No other form of withdrawal or modification (e.g., telephone or facsimile) will be accepted.

PRE-OPENING SOLICITATION WITHDRAWALS – ELECTRONIC: A submitting vendor using the Sicommnet BASEC electronic purchasing system may withdraw a previously submitted solicitation response at any time prior to the closing by submitting another response with a zero unit price for each affected line item of the solicitation and inserting the words “NO BID” in the comments field for each affected line item. A vendor may modify a previously submitted solicitation response at any time prior to the closing by submitting another solicitation response.

PRE-OPENING SOLICITATION MODIFICATION – ELECTRONIC: A submitting vendor using the Sicommnet BASEC electronic purchasing system may modify or change a previously submitted solicitation response at any time prior to the closing

by submitting another solicitation response which modifies the affected line items. Each additional response or submission has the effect of canceling the previous response and replacing it with the submitting vendor's most current solicitation response.

22. **REJECTION OF BIDS AND CANCELLATION OF BID SOLICITATION:** Prior to the issuance of a purchase order or contract, the Administrator of the Division of Purchasing shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: (i) it is in the best interests of the state of Idaho; (ii) the bid does not meet the minimum bid specifications; (iii) the bid is not the lowest responsible bid; (iv) a finding is made based upon available evidence that a bidder is not responsible or is otherwise incapable of meeting specifications or providing an assurance of ability to fulfill contract requirements; or (v) the item offered deviates to a major degree from the bid specifications, as determined by the Administrator (minor deviations, as determined by the Administrator, may be accepted as substantially meeting the bid requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive bidding process or provide a bidder an unfair advantage. Prior to the issuance of a purchase order or contract, the Administrator of the Division of Purchasing shall have the right to reject all bids, proposals, or quotations or to cancel a solicitation or request for quotations. Cancellation may be for reasons that include but are not limited to: (i) inadequate or ambiguous specifications; (ii) specifications have been revised; (iii) property is no longer required; (iv) there is a change in requirements; (v) all bids are deemed unreasonable or sufficient funds are not available; (vi) bids were not independently arrived at or were submitted in bad faith; (vii) it is determined that all requirements of the bid process were not met; (viii) insufficient competition; or (ix) it is in the best interests of the state of Idaho.
23. **SPECIAL BRANDS:** Special brands, when named, are only to indicate the standard of quality desired. Submitting vendors may bid or propose their equal, except when specifications require no substitution. Offerings on other brands, if their equal, may be considered, but brands or descriptions of the equal must be plainly stated. "Equal" means any other brand that is equal in use, quality, economy, and performance to the brand listed. If the submitting vendor lists a trade name and/or catalog number, the State will assume the item meets the specifications, unless the submission clearly states it is an alternate, and describes specifically how it differs from the item specified. **MULTIPLE OR ALTERNATE BIDS WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.**
24. **BURDEN OF PROOF:** ANY VARIATIONS of brand names or deviations from the specifications **MUST BE CLEARLY STATED.** It shall be the responsibility and burden of the submitting vendor to furnish the State **WITH ITS ORIGINAL SUBMISSION** sufficient data to determine if the goods or services offered conform to the specifications.

25. **DISCOUNTS:** Discounts, when applicable, shall be shown in a single percentage figure, e.g., 57-1/4% instead of 50, 10, and 5 percent. **DISCOUNTS FOR PROMPT PAYMENT WILL BE ACCEPTED BUT CANNOT BE USED TO DETERMINE THE LOWEST BID.**
26. **UNIT PRICES GOVERN:** Unit prices shall govern, but please extend the amount column, to avoid mistakes. **IMPORTANT:** Prices must be given in the "unit of quantity" asked for. Example: If the documents ask for an item by the "piece," bid by the "piece". If the documents ask for an item by the "foot," bid by the "foot".
27. **FIRM PRICES:** No bid, proposal, or quotation will be accepted if marked "Price prevailing at time of delivery." After the date and time of closing, no price increase will be allowed, unless otherwise stipulated by the State's bid solicitation documents.
28. **ORAL INFORMATION:** The State will not be responsible for any verbal or oral information given by the requisitioning agency regarding a bid. Questions concerning a solicitation must be directed in writing to the State agency or entity issuing the solicitation in sufficient time prior to the opening to permit an answer in writing. Bids, proposals, or quotations deviating from the specifications by any means other than an authorized written addendum will be subject to rejection. Reliance on any oral representation is at the vendor's sole risk. Unless otherwise provided in the solicitation documents, questions will not be considered if received less than five (5) working days before the opening.
29. **PAYMENT:** Unless otherwise specified in the solicitation documents, payment will be made after acceptance of the conforming property and after receipt by the requisitioning agency of a proper invoice. In general, no advance or progress payments will be made.
30. **PACKAGING:** Bidders are to list their standard packaging for the items listed if other than specified.
31. **GOVERNMENTAL USE ONLY:** Unless otherwise noted in the bidding documents, all purchases made pursuant to the bidding documents are for the internal use of government only and will not be resold to the general public at retail. Upon request, the State will issue a certification that all purchases made pursuant to the bid documents are intended for the internal use of government and will not be resold to the general public at retail.
32. **PUBLIC RECORDS:** The Idaho Public Records Law, Idaho Code Sections 9-337 through 9-348, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a state or local agency regardless of the physical form or character. **ALL, OR MOST, OF THE INFORMATION CONTAINED IN YOUR RESPONSE TO THE STATE'S SOLICITATION WILL BE A PUBLIC RECORD SUBJECT TO DISCLOSURE**

UNDER THE PUBLIC RECORDS LAW. The Public Records Law contains certain exemptions. One exemption potentially applicable to part of your response may be for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. If you consider any element of a bid or proposal to be a trade secret, or otherwise protected from disclosure, you **MUST** so indicate by marking **EACH PAGE** of the pertinent document. Include the specific basis for the your position that it be treated as exempt from disclosure. Marking your entire bid or proposal as exempt is not acceptable or in accordance with the bid documents or the Public Records Act and **WILL NOT BE HONORED**. In addition, a legend or statement on one (1) page that all or substantially all of the response is exempt from disclosure is not acceptable or in accordance with the Public Records Act and **WILL NOT BE HONORED**. **PRICES QUOTED IN YOUR BID OR PROPOSAL ARE NOT A TRADE SECRET**. The State, to the extent allowed by law and in accordance with these terms and conditions and the solicitation documents, will honor a designation of nondisclosure. You will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Any questions regarding the applicability of the Public Records Law should be addressed to the Division of Purchasing or should be presented to your own legal counsel - **PRIOR TO SUBMISSION**.

33. **PRIOR ACCEPTANCE OF DEFECTIVE BIDS OR PROPOSALS:** Due to the limited resources of the State, the State generally will not completely review or analyze bids or proposals that appear to fail to comply with the requirements of the solicitation documents or that clearly are not the best bids or proposals, nor will the State generally investigate the references or qualifications of those who submit such bids or proposals. Therefore, any acknowledgment that the selection is complete shall not operate as a representation by the State that an unsuccessful bid was responsive, complete, sufficient, or lawful in any respect.
34. **LENGTH OF CONTRACT:** Pursuant to Idaho Code Section 67-5717(9), the State may enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the State in the event cancellation is necessitated by a lack of financing for any such contract or contracts.
35. **LEASE-PURCHASE OPTIONS:** Idaho Code Section 67-5721 reads, in part, as follows: "Any exercise of an option to acquire (goods, services, parts, supplies and equipment), or any other procedure which shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and prior to execution all applicable provisions and procedures of this chapter [67-5714 through 67-5744] shall be exercised." (NOTE: This provision is NOT applicable to Time Purchase or Installment Purchase Contracts).

STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS

DEFINITIONS - For purposes of these STATE OF IDAHO STANDARD CONTRACT TERMS AND CONDITIONS, the following terms have the specific meanings associated with them:

Agreement - Means any State written agreement, lease, purchase order, or contract, including solicitation or specification documents and the accepted portions of the submission for the acquisition of property.

Contractor - A vendor who has been awarded an acquisition contract or Agreement.

State - This means the state of Idaho including each agency unless the context implies other states of the United States.

1. **TERMINATION:** The State may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days, after receipt of such notice. If the Agreement is terminated for default or non-compliance, the Contractor will be responsible for any direct costs and/or damages incurred by the State for placement of a new contract. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.
2. **RENEWAL OPTIONS:** Upon mutual agreement by both parties (unless otherwise modified by a special contract term, condition, or specification), this Agreement may be extended under the same terms and conditions for one (1) year intervals or the time interval equal to the original contract period.
3. **PRICES:** Prices shall not fluctuate for the period of the Agreement and any renewal or extension, unless otherwise specified by the State in the bidding documents or other terms of the Agreement. Product prices shall remain valid for the time of the original order date, including change orders that may extend delivery beyond the original delivery date. Prices include all costs normally associated with shipping and delivery to the F.O.B. destination address.
4. **CHANGES/MODIFICATIONS:** Changes of specifications or modification of this Agreement in any particular can be effected only upon written consent of the State, but not until any proposed change or modification has been submitted in writing, signed by the party proposing the said change.
5. **CONFORMING GOODS OR SERVICES:** The goods or services shall minimally conform in all respects with the specifications or the State's solicitation documents. In

event of nonconformity, and without limitation upon any other remedy, the State shall have no financial obligation in regard to the non-conforming goods or services.

6. **OFFICIAL, AGENT AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE:** In no event shall any official, officer, employee or agent of the state of Idaho be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.
7. **CONTRACT RELATIONSHIP:** It is distinctly and particularly understood and agreed between the parties hereto that the state of Idaho is in no way associated or otherwise connected with the performance of any service under this Agreement on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of this Agreement, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, indemnify and hold the state of Idaho harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under this Agreement. The Contractor will maintain any applicable workman's compensation insurance and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certification of workman's compensation insurance may, at the State's option, result in cancellation of this Agreement or in a contract price adjustment to cover the State's cost of providing any necessary workman's compensation insurance. The State does not assume liability as an employer.
8. **ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE:** Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the

Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

9. **TAXES:** The state of Idaho is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the state of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. If, after the effective date of this Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time this Contract becomes effective, the state of Idaho will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the state of Idaho be responsible for personal property taxes affecting items subject to this Contract at the time it becomes effective.
10. **SAVE HARMLESS:** Contractor shall indemnify and hold harmless the state of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of the Contractor, its employees, agents, or subcontractors under this Agreement that cause death or injury or damage to property or arising out of a failure to comply with any state or federal statute, law, regulation or act. **IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES.** Contractor shall have no indemnification liability under this section for death, injury, or damage arising out of the negligence or misconduct of the State.
11. **ORDER NUMBERS:** Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
12. **CONTRACTOR RESPONSIBILITY:** The Contractor shall be required to assume responsibility for production and delivery of all material and services included in this Agreement, whether or not the Contractor is the manufacturer or producer of such material or services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.
13. **SUBCONTRACTING:** Unless otherwise allowed by the State in this Agreement, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted

work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

14. **STATE OF IDAHO MINIMUM WAGE LAW:** It will be the responsibility of the Contractor to fully comply with Idaho law regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.
15. **COMMODITY STATUS:** It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the State in the specifications. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the state of Idaho as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or vendor warranty, whichever is longer.
16. **SHIPPING, DELIVERY, INSTALLATION, AND ACCEPTANCE:** All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. "F.O.B. Destination", unless otherwise specified in the Agreement or solicitation documents, shall mean delivered to the State Agency Receiving Dock or Store Door Delivery Point. The Contractor shall deliver all orders as specified and complete installation, if required, within the number of days after receipt of order (A.R.O.) offered, unless otherwise specified in the solicitation documents. Time for delivery commences at the time the order is received by the Contractor. When the purchase price does not include installation, acceptance shall occur fourteen (14) calendar days after delivery, unless the State has notified the Contractor in writing that the order does not meet the State's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs. When installation is included, acceptance shall occur upon completion of installation. If an order is for support or other services, acceptance shall occur fourteen (14) calendar days after completion, unless the State has notified the Contractor in writing that the order does not meet the State's requirements or otherwise fails to pass the Contractor's established test procedures or programs.

17. **RISK OF LOSS:** Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement. If installation is requested by the State or specified in the State's bidding documents, pricing shall include all charges associated with a complete installation at the location specified.
18. **INVOICING:** ALL INVOICES are to be sent directly to the ORDERING DEPARTMENT ONLY. The Agreement number and/or purchase order number is to be shown on all invoices. In no case are invoices to be sent to the Division of Purchasing.
19. **ASSIGNMENTS:** No contract or order or any interest therein shall be transferred by the Contractor to whom such contract or order is given to any other party, without the approval in writing of the Administrator, Division of Purchasing. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the State. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the State. (Idaho Code Section 67-5726(1))
20. **PROHIBITED CONTRACTS:** No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Idaho, if made by, through or on behalf of the department in which he is an officer or employee or if made by, through or on behalf of any other department unless the same are made after competitive bids. (Idaho Code Section 67-5726(1)).
21. **PAYMENT PROCESSING:** Idaho Code Section 67-5735 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered."
22. **GOVERNMENT REGULATIONS:** Contractor guarantees that all items meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.
23. **SAFETY INFORMATION:** All chemicals, equipment and materials proposed and/or used in the performance of this Agreement must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Contractor must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

24. **HOT GOODS:** The Contractor hereby certifies that all goods provided under this Agreement are produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and the regulation and orders of the United States Department of Labor issued under Section 14 thereof and other applicable provisions of the Fair Labor Standards Act.

25. **PATENTS AND COPYRIGHT INDEMNITY**

- a) Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for items purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.
- b) Contractor shall have no liability to the State under any provision of this clause with respect to: any claim of infringement that is based upon (i) the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications; (ii) the modification by the State of the item(s); or (iii) the use of the item(s) not in accordance with Contractor's previously established specifications.
- c) Should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the item(s), to replace or modify the item(s) so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the item(s) and accept its return.

26. **CONFIDENTIAL INFORMATION:** Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then, only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the State upon

termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. "Confidential Information" shall not include data or information that:

- a) Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- b) Becomes generally available to the public other than as a result of disclosure by Contractor; or
- c) Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

27. **USE OF THE STATE OF IDAHO NAME:** Contractor agrees that it will not, prior to, in the course of, or after performance under this Agreement use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.
28. **APPROPRIATION BY LEGISLATURE REQUIRED:** It is understood and agreed that the State is a government entity and this Agreement shall in no way or manner be construed so as to bind or obligate the state of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its judgment, the Legislature of the state of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) calendar days after notice to the Contractor. It is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations and, in some instances, direct federal funding.
29. **SPECIAL TERMS GOVERN:** In the event of any conflict between these standard terms and conditions and any special terms and conditions included in the solicitation, the special terms and conditions will govern.
30. **FORCE MAJEURE:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the State promptly in writing of any cause for delay and the State concurs that the delay was beyond the control and without the fault or

negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

31. **GOVERNING LAW AND SEVERABILITY:** This Agreement shall be construed in accordance with, and governed by the laws of the state of Idaho. Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the Agreement shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (IUCC). To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this Agreement shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.
32. **ENTIRE AGREEMENT:** This Agreement, with the State's Invitation to Bid, Request for Proposal, or Request for Quotation, including any addenda (such deemed incorporated by reference) and the vendor's response, to the extent it is not in conflict with the specifications or the States terms and conditions (such document deemed incorporated by reference), constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids, proposals, or quotations, both oral and written, discussions, representations, commitments, and all other communications between the parties. Where terms and conditions specified in the State's documents or the Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties. The terms of the Agreement shall prevail notwithstanding any variances with the terms and conditions of any other order submitted by the state of Idaho.

STANDARD HARDWARE AND SOFTWARE TERMS AND CONDITIONS

The state of Idaho, by and through its statutory agent, the Administrator of the Division of Purchasing, within the Department of Administration, (the "State"), on behalf of the State of Idaho Agency named elsewhere in this Agreement (the "State Agency"), subject to the following terms of this Agreement (the "Agreement"), contracts with the Contractor named elsewhere in this Agreement (the "Contractor"), for the purchase (including installment purchase) or lease of personal property items set forth in the Schedule attached hereto and incorporated in full, hereafter referred to as "Products." These Hardware and Software Terms and Conditions are in addition to the State of Idaho's Standard Contract Terms and Conditions found on the Internet at <http://www2.state.id.us/adm.purchasing>, incorporated into and made part of this bid and any ensuing contract. In the event of any conflict between these Hardware and Software Terms and Conditions and the Standard Terms and Conditions, these Hardware and Software Terms and Conditions shall prevail.

1. DEFINITIONS. As used in this Agreement.

A. "Commercial Computer Software" means Computer Software that is used regularly for other than government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices (i.e., that can be considered "shrinkwrap") or Computer Software that does not constitute Special Products and is regularly sold, licensed or leased by the Contractor to governmental entities to meet governmental requirements (i.e., that can be considered "shrinkwrap").

B. "Computer" means a Data processing device capable of accepting Data, performing prescribed operations on the Data, and supplying the results of these operations; for example, a device that operates on discrete Data by performing arithmetic and logic processes on the Data, or a device that operates on analog Data by performing physical processes on the Data.

C. "Computer Data Base" means a collection of Data in a form capable of being processed and operated on a Computer.

D. "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor, or controller that is designed to cause the Computer, processor, or controller to execute an operation or operations. Computer Programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and ADPE Maintenance/Diagnostics programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs and the like. Computer Programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

E. "Computer Software" or "Software" means Computer Programs and Computer Data Bases.

F. "Computer Software Documentation" means technical Data, including Computer listings and printouts, in human-readable form that:

- (1) Documents the design or details the Computer Software;
- (2) Explains the capabilities of the Software; or
- (3) Provides operating instructions for using the Software to obtain desired results from a Computer.

G. "Data" means recorded information, regardless of form or method of recording.

H. "Hardware" includes Computers, printers, attached equipment or other equipment utilized for the State's intended purpose.

I. "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts and upgrades.

J. "Special Products" are Products that have been modified by mutual agreement to meet the State's requested changes.

K. "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates, maintenance and support services, consulting, training and other support services provided by or through Contractor.

2. **SAVE HARMLESS.** Subject to the limits set forth in Sections 7.B.(6) and 7.C of this Agreement, the Contractor shall indemnify and hold harmless the State of Idaho from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorneys' fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Contractor and its Subcontractors under this Agreement and that cause death or injury or damage to property or that arise out of a failure to comply with any state or federal statute, law, regulation or act.

3. **SOFTWARE LICENSE.** In this section on Software Licenses, the term "Use" means storing, loading, installing, executing or displaying Software on a Computer, processor, or controller, or making a copy of Software for archival or backup purposes only.

A. Contractor grants State a personal, non-transferable and non-exclusive right to use, in object code form, all Software and related documentation furnished to State under this Agreement. This grant shall be limited to use with the Hardware or Products for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed to in writing by Contractor.

B. State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set out in this Agreement. State also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the Software.

C. State is permitted to make a single archive copy of Software. Any copy must contain the same copyright notice and proprietary markings that are on the original Software.

D. Use of Software on any Products other than that for which it was obtained, removal of Software from the United States, or any other material breach shall automatically terminate this license.

E. The terms and conditions of a standard software license agreement applicable to Commercial Computer Software acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and the Contractor's standard software license agreement, the terms or conditions of this Agreement shall take priority and control, provided, however, without limitation, that the provisions of this Agreement relating to choice of law found at Section 31 of the State's Standard Contract Terms and Conditions, the remedy for copyright infringement found at Section 25 of the State's Standard Contract Terms and Conditions and the Exclusive Remedies and Limitation of Liability at Section 7 herein shall apply in all cases and supersede any provisions contained in Contractor's software licensing agreement or any other agreement.

F. State's license includes the right to updates, upgrades, or other enhancements. The Contractor reserves the right to an additional license fee for such update, upgrades, or other enhancements.

G. Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Contractor or subsequently upgraded by Contractor.

H. State's license infers no title or ownership in the Software and no rights in any associated source code, unless otherwise agreed to in writing by the parties, and will not be construed as a sale of any ownership rights in Software, unless such Software is being developed or modified exclusively as a Special Product in response to the State's bidding documents.

I. State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

4. USE OF SOFTWARE AND INFORMATION.

A. State agrees that any Software or technical and business information ("Information") owned by Contractor or its suppliers and furnished to State under this Agreement shall remain the property of Contractor or the supplier.

B. All Software and information furnished to State under this Agreement:

(1) shall be used by State only to install, operate or maintain the Product for which they were originally furnished;

(2) shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this Agreement; and

(3) shall, together with any copies except one (1) copy for archival purposes containing State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

C. All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except for any part that:

(1) is rightfully obtained by State free of any obligation to keep in confidence;

(2) becomes generally known to the public through acts not attributable to State;

(3) is independently developed by State, or

(4) is subject to disclosure in accordance with the provisions of the Idaho Public Records Act.

D. (1) Within the United States, a Software or program license may be transferred to another location within the State's organization upon written notice to Contractor without additional costs. All other transfers, including a Software or program license outside the United States, shall be permitted only with Contractor's prior written consent which consent shall not be unreasonably withheld and shall be subject to Contractor's standard transfer fee in effect at the time of the transfer.

(2) The rights granted herein are restricted for use solely by State. State may not authorize or allow the use or marketing of the Software/Programs by a third party, and may not assign or transfer the Software or programs to a third party, without the prior written consent of Contractor. The new end user must agree in writing to Contractor's terms and conditions respecting ownership, use and confidentiality of Software and information and to payment of any scheduled fees.

E. Special Products, if sought in the State's bidding documents, are being developed or modified exclusively for the State, and such Special Products, all related Data, all copyrights in Special Products and derivative works belongs exclusively to the State and are hereby transferred to the State.

5. WARRANTIES.

A. Product warranties shall include the following at a minimum:

(1) On the delivery date the Products and the associated computer operating system Software (basic Software acquired with the equipment that enables equipment to function) will be in good working order and in accordance with Contractor's standard specifications. Unless otherwise specified in the State's bidding documents, the warranty for other suppliers' Commercial Computer Software is included in the supplier's software package and is provided directly from the supplier.

(2) The warranty period shall be as specified in the State's bidding documents and shall begin on the day following successful installation. If no warranty period is specified, the warranty period shall be Contractor's standard warranty period for the Products ordered, commencing the day following successful installation.

(3) State shall notify Contractor if any Product is not in good working order during the warranty period. Contractor will, at its option, either repair or replace any Product not in good working order without charge to State. Repair or replacement Products will be new or equivalent to new in performance and fully warranted the same as new. All returned Products will become the property of Contractor at the time the Product is picked up by Contractor or placed in shipment to Contractor.

(4) The service provided during the warranty period is dependent upon the applicable warranty option selected by State and indicated in the State's bidding documents. If no warranty option is indicated, Contractor will provide the warranty service that is Contractor's standard for such Product, unless otherwise agreed to by the parties.

(5) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates agreed to in such writing.

B. Software warranties shall include the following at a minimum:

(1) Contractor warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date unless otherwise agreed to in writing by the parties. Contractor will replace without charge any Contractor supplied tapes, diskettes or other media that is not in good working order, during the warranty period, if returned to Contractor. If Contractor is unable to replace the Software, Contractor will refund the full amount paid for the use of the Contractor Software.

(2) In addition to the warranty exclusions stated in Section 6, Contractor does not warrant that the operation of Products acquired under this Agreement will be uninterrupted or error free, or that the Software functions will meet State's requirements unless a Special Product Software. Although Contractor has used reasonable efforts to minimize defects or errors in the Software, State assumes the risk of any damage or loss from the use of or inability to use the Software.

(3) For any Special Product Software provided pursuant to this Agreement, Contractor warrants that for a period of one (1) year after the State accepts the Special Product Software, the Special Product Software will operate and perform error free as the Special Product Software solution for the named State Agency, and in accordance with the functions and specifications as set forth in the Agreement. This express warranty applies only if the State specifically identifies in its specifications the Hardware on which the Special Product Software will be used or if the Special Product Software is used in connection with Hardware acquired in connection with this Agreement.

C. Contractor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date Support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after delivery and Contractor's successful installation, Contractor or its suppliers will provide telephone assistance to State during State's normal business hours unless otherwise agreed to in writing by the parties.

6. WARRANTY EXCLUSIONS.

A. EXCEPT AS STATED IN SECTION 5, CONTRACTOR, ITS PARENT, SUBSIDIARIES AND THEIR AFFILIATES, SUB-CONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. The warranty provided in Section 5 does not cover repair for damages, malfunctions or service failures caused by:

(1) actions of non-Contractor personnel;

(2) failure to follow Contractor's installation, operation or maintenance instructions previously provided to State;

(3) attachment to the Products of non-Contractor products or failure of products not maintained by Contractor unless such installation or use is approved in writing by the Contractor; or

(4) Force Majeure conditions set forth in Section 30 of the State's Standard Contract Terms and Conditions.

7. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY.

A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7, "CONTRACTOR" SHALL BE DEEMED TO INCLUDE THE CONTRACTOR AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, AND SUPPLIERS AND "DAMAGES" SHALL BE DEEMED TO REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS, LIABILITY, EXPENSE OR COST INCURRED.

B. CONTRACTOR'S ENTIRE LIABILITY AND STATE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

(1) FOR INFRINGEMENT, THE REMEDIES SET FORTH IN SECTION 25 OF THE STATE'S STANDARD CONTRACT TERMS AND CONDITIONS.

(2) FOR FAILURE OF PURCHASED OR LEASED PRODUCTS, THE REMEDIES STATED IN SECTION 5 HEREIN. IF CONTRACTOR IS UNABLE, DESPITE REASONABLE EFFORTS, TO REPAIR OR REPLACE, STATE SHALL HAVE THE RIGHT DURING THE WARRANTY PERIOD TO RETURN THE PRODUCTS FOR A REFUND OF THE PURCHASE PRICE.

(3) FOR FAILURE OF SOFTWARE, THE REMEDY STATED IN SECTION 5 HEREIN.

(4) FOR DELAYS IN THE DELIVERY OR SUCCESSFUL PRODUCT INSTALLATION, WHICHEVER IS APPLICABLE, CONTRACTOR SHALL HAVE NO LIABILITY UNLESS THE DELIVERY OR SUCCESSFUL INSTALLATION DATE IS DELAYED BY MORE THAN THIRTY (30) DAYS BY CAUSES NOT ATTRIBUTABLE EITHER TO STATE OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE STATE SHALL HAVE THE RIGHT, AS ITS REMEDIES:

(a) TO RECOVER DIRECT COSTS INCLUDING REPLACEMENT PRODUCTS, IF ANY, ATTRIBUTABLE TO CONTRACTOR'S DELAY, SPECIFICALLY EXCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES; AND

(b) TO CANCEL THE ORDER WITHOUT INCURRING CANCELLATION CHARGES.

(5) FOR PROVEN DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY, EXCLUDING THE STATE'S OTHER SOFTWARE, DATA, AND DATA FILES, OR FOR BODILY INJURY OR DEATH TO ANY PERSON NEGLIGENTLY CAUSED BY CONTRACTOR.

(6) FOR CLAIMS OTHER THAN SET FORTH IN 7.B(1) THROUGH 7.B(5), CONTRACTOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES, NOT TO EXCEED TWO (2) TIMES THE AGREEMENT VALUE OR ONE (1) MILLION DOLLARS (\$1,000,000.00), WHICHEVER IS GREATER.

C. EXCEPT TO THE EXTENT PROVIDED IN SUBSECTION 7.B(5) ABOVE, CONTRACTOR SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. SUPPORT.

A. Except as specifically provided, an order for Support will constitute State's acceptance of the terms of the exhibit for that Support in effect on the date of order. The terms and conditions of a standard support services program agreement (for example, a gold, silver or bronze or similar program) applicable to Products and acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms or conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and a standard agreement, the terms or conditions of this Agreement shall take priority and control, provided, however, and without limitation, that the provisions of this Agreement relating to choice of law found at Section 31 of the State's Standard Contract Terms and Conditions, and the Exclusive Remedies and Limitation of Liability at Section 7 herein shall apply in all cases and supersede any provisions contained in a standard services agreement or any other agreement.

B. To be eligible for Support, Products must be in good operating condition and at current specified revision levels. Contractor will charge Contractor's standard rates

in effect on the date of the Support order to bring non-eligible Products up to these requirements.

C. Contractor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.

D. Relocation of Products is State's responsibility and may result in additional Support charges and modified service response times. Products moved to another county may continue to be serviced subject to availability of a Contractor authorized Support provider.

E. Contractor is not required to provide Support for nonqualified products. "Nonqualified products" are hardware and Software not supplied or approved by Contractor, and Products for which the State does not allow Contractor to incorporate modifications. The State is responsible for removing nonqualified products to allow Contractor to perform Support services.

F. Support does not cover any damage or failure caused by:

(1) media and supplies or use of items not designated for use with Products;
or

(2) site conditions that do not conform to Contractor's previously established site specifications; or

(3) neglect, improper use, fire or water damage, electrical disturbances, transportation by State, work or modification by people other than Contractor's employees, subcontractors, or other authorized parties.

G. The State is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the Products to reconstruct lost or altered files, data or programs. State must have a representative present when Contractor provides Support services. State must notify Contractor if Products are being used in an environment that poses a potential health hazard to Contractor's employees or subcontractors.

5. GENERAL INFORMATION

Appointments with Buyers and Agency Personnel

Buyers and agency personnel operate under substantial work loads. Making prior appointments will help us give your presentations or discussions our undivided attention.

Although every effort will be made to accommodate vendor's representatives who arrive unannounced, we cannot assure prompt attention. To avoid unnecessary delays, please make appointments in advance.

State Not A Reseller

Unless otherwise noted in the bidding documents, all purchases made pursuant to solicitations are for the internal use of government only and will not be resold to the general public at retail. Upon request, the Division of Purchasing will issue a certification to this effect.

Contracts or Blanket Purchase Orders

The State develops, bids, and awards written Blanket Purchase Orders in the form of term contracts, indefinite delivery/indefinite quantity contracts, leases, price agreements, maintenance agreements, or other acquisition agreements whose subject matter involves multiple payments or deliveries. A Blanket Purchase Order also includes any amendments or change orders. Blanket Purchase Orders may be issued for use by a single agency, or by all agencies, including other public agencies (political subdivisions) of the State.

Bid solicitations normally include an estimated quantity or need, delivery information, and terms and conditions. The award of a contract does NOT authorize shipment of goods. Shipment of goods is only authorized after receipt of a completed release purchase order or other purchasing authorization issued by the individual agency.

A complete list of current statewide contracts is available for viewing on the Internet at the Idaho Purchasing Homepage.

Gift Policy

It is the policy of the Division of Purchasing that no individual employee may accept any token of appreciation, no matter how insignificant. This includes lunches, dinners, or other traditional gratuities. We will appreciate you informing the employees of your company of this restriction.

Definition of an Idaho Vendor

An Idaho vendor is defined as one who is “domiciled” in Idaho or is said to have a “significant Idaho economic presence.”

Domiciled means where a corporation is chartered or incorporated or where a sole proprietor or partnership is located or has its permanent headquarters. Bidders domiciled in states other than Idaho who have a "significant Idaho economic presence" for one year

preceding the bid date, may be considered an Idaho domiciled bidder. Significant Idaho Economic Presence is a phrase defined in Idaho Statute 67-2349 that means a vendor is considered “domiciled” if they have maintained a staffed office, sales office, sales outlet, manufacturing facility, or warehouse for at least one (1) year and, if a corporation, be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

Reciprocal Preference Law

Some states and countries provide a preference for vendors within their borders and add a percentage to bids received from outside states. Where that happens, the State of Idaho responds (reciprocates) in like manner by adding the same percentage to bids received from vendors who are “domiciled” in those states or countries. This applies to the purchases of materials, supplies, equipment, services, and public works projects. Idaho Code 67-2348 and 67-2349 applies to any department, division, bureau or agency thereof, city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body that solicits competitive bids. The law is applicable to any purchase that is bid, regardless of the dollar amount, and is not limited to the United States. It is not applicable to purchases that are not competitively bid, such as: small purchases under \$5,000, sole source purchases, emergency purchases, and other purchases that are exempt from bidding.

In determining the lowest responsible bidder, a percentage increase is added to each out-of-state bidder’s bid price, which is equal to the percent of preference given to local bidders in the bidder’s home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, the Idaho agency must add 10 percent to that bidder’s price when evaluating the bid. It is only applied to bid evaluations when comparing bids from Idaho “domiciled” vendors with bids from out-of-state vendors with a preference in their state. The percentage is not applied when comparing one out-of-state bid with another out-of-state bid. In no instance is the increase (penalty percentage) actually paid to a vendor whose bid is accepted.

Printing Preference

Two Idaho statutes in Idaho Code allow for a printing preference, 60-101 and 60-103. Originally enacted in 1903 and last revised in 1980, this section of code provides for a 10% preference for printing done in Idaho (with the exception of printing of state laws). For bids or quotations for printing being produced outside of the State of Idaho, 10% additional cost is added to the bid for evaluation purposes only. It applies to all aspects of a printing project; printing, engraving, binding, and stationery work. If any portion of a printing project is performed outside of the state, then the printing preference is applied. This section of code applies to all public agencies; state, county, city, local, school districts, etc. and has no dollar limitation associated with it.

Small, Minority, or Disadvantaged Businesses Preferences

There are no preferences, quotas or goals for purchasing from small, minority, or disadvantaged businesses in Idaho Code. The Division of Purchasing does not collect or track this type of information. However, several state agencies (Transportation, Environmental Quality, Water Resources, etc.) receive federal money that has, as a condition, the use of small, minority, or disadvantaged business enterprises. The Idaho Department of Transportation has a program called the Disadvantaged Business Enterprises Supportive Services Program (DBE) that certifies small businesses for work on federally funded transportation projects. For information on the DBE contact the Idaho Department of Transportation DBE coordinator at 208-334-8567.

Tie Bid Preferences

In cases where a tie bid occurs, Idaho Code 67-5718 (5) gives preference to Idaho products and Idaho vendors. IDAPA 38-05.01 - Rules of the Division of Purchasing, Rule 82.b also allows for awarding to Idaho vendors or Idaho products in case of a tie bid.

Public Records Policy

- **Open Records** All records of purchases and of the Division of Purchasing are open and accessible to the public during the regular office hours of the Division. Requests for inspection of records must be reasonable, contain sufficient information for retrieval, and must not interfere with the orderly operation of the Division. Purchase records do not include the identity of prospective bidders prior to bid opening where such disclosure might negate the competitive bid process or provide a vendor an unfair competitive advantage. Individual purchase records are not available until after award with the exception of the public opening and examination procedures.

Only the contents of Invitations to Bid are available for public examination at the public bid opening. Bidders are encouraged to attend the public bid opening on the day and the time specified for all sealed bids.

For Request for Proposals, only the names of those submitting proposals will be disclosed at the public bid opening. No public examination of Request for Proposals are allowed until after the award. Proposal offerors are encouraged to attend the public bid opening on the day and the time specified for all sealed bids

A limited exemption for proprietary information or trade secrets exists in the Idaho Public Records Law (*I.C. 9-338*).

- **Public Records Photocopy Request Policy** It is the policy of the Division of Purchasing to respond to all public record photocopy requests within three (3) working days. There is no charge for the first forty (40) pages copied. A charge of \$.05 per page

will be charged for larger requests (including the first 40 pages). Current solicitations prior to bid opening and tabulations are not subject to this photocopy charge.

Purchases for Private Use

Idaho law prohibits employees or officials of the State to purchase, directly or indirectly, materials, equipment or supplies for personal or individual ownership or through utilization of State Contracts or influence upon a vendor.

Substitutions after Contract Award

Substitution is defined as shipment of an item that does not conform to the purchase order specifications. Substitutions require the prior written approval of the Division of Purchasing and if granted will be only for exceptional circumstances. Any supplies delivered that do not meet specifications will be returned to the vendor at the vendor's expense.

Listing of Job Openings

The Division of Purchasing strongly encourages all vendors doing business with the state to join in a partnership with the State of Idaho in the hiring of qualified veterans by listing all suitable job openings with their nearest Job Service office.

Anti-Discrimination/Equal Employment Opportunity

All State of Idaho contracts bind the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving Federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et sequence, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990 are also incorporated into contracts. The Contractor must include these requirements in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

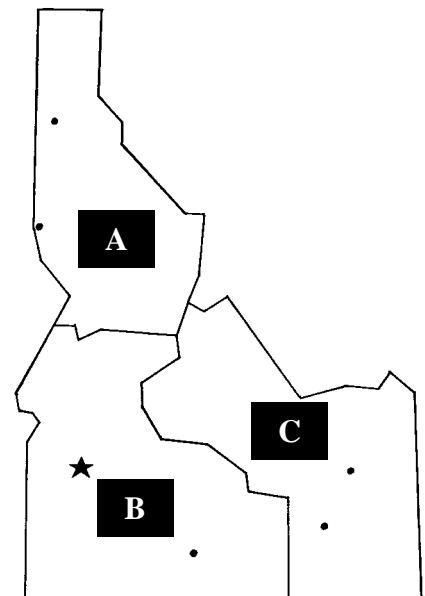
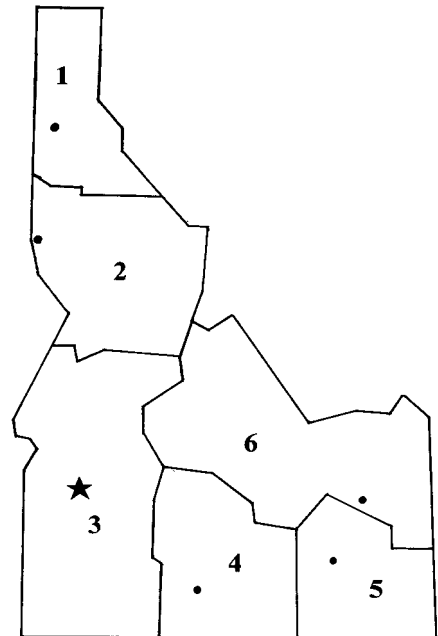
6. ZONE - AREA MAPS

Most statewide contracts (BPO) are bid and awarded by Zones (6) or Areas (3) of the state. Bidders may submit bids and be awarded any number or all zones or areas. The bidding specifications will include detailed information regarding zones, areas, and delivery requirements. Zone and Area maps are also available at the Idaho Purchasing Homepage web site.

Zones

List of Counties per Zone:

<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	
Benewah	Clearwater	Ada	Gem
Bonner	Idaho	Adams	Owyhee
Boundary	Latah	Boise	Payette
Kootenai	Lewis	Canyon	Valley
Shoshone	Nez Perce	Elmore	Washington
 <u>Zone 4</u>	 <u>Zone 5</u>	 <u>Zone 6</u>	
Blaine	Bannock	Bonneville	
Camas	Bear Lake	Butte	
Cassia	Bingham	Clark	
Gooding	Caribou	Custer	
Jerome	Franklin	Fremont	
Lincoln	Oneida	Jefferson	
Minidoka	Power	Lemhi	
Twin Falls		Madison	
		Teton	



Areas

Area A

Combination of Zones 1 & 2

Area B

Combination of Zones 3 & 4

Area C

Combination of Zones 5 & 6